



February 17, 2006

ENGROSSED HOUSE BILL No. 1010

DIGEST OF HB 1010 (Updated February 15, 2006 6:08 pm - DI 106)

Citations Affected: IC 22-13; IC 23-14; IC 32-24; IC 36-7; noncode.

Synopsis: Eminent domain. Requires a condemnor, before proceeding to acquire property by use of eminent domain, to: (1) establish a proposed purchase price; (2) provide the owner with an appraisal or other evidence used to establish the proposed purchase price; and (3) conduct a good faith negotiation with the owner of the property. Requires a condemnor, except the department of transportation (department), certain utilities, and certain other persons, to proceed to acquire the property by use of eminent domain not more than two years after the condemnor submits a written acquisition offer to the owner of the property. Requires the department, certain utilities, and certain other persons to initiate eminent domain proceedings not more than six years after the department, utility, or other person submits a written acquisition offer to the property owner. Requires two of the three
(Continued next page)

Effective: Upon passage; July 1, 2006.

**Wolkins, Foley, Grubb, Dvorak,
Hoy, Cherry, Ulmer, Noe**

(SENATE SPONSORS — BRAY, DROZDA, SIPES, LEWIS)

January 5, 2006, read first time and referred to Committee on Judiciary.
January 10, 2006, amended, reported — Do Pass.
January 24, 2006, read second time, amended.
January 25, 2006, reread second time; made special order of business; amended, ordered engrossed.
January 26, 2006, engrossed. Read third time, passed. Yeas 97, nays 0.
SENATE ACTION
February 1, 2006, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
February 16, 2006, amended, reported favorably — Do Pass.

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appraisers appointed under the eminent domain law to be: (1) licensed under the law concerning real estate brokers and salespersons; and (2) residents of Indiana. Extends certain deadlines under the eminent domain law. Provides that if a condemnor fails to: (1) take possession of property the condemnor acquired through the use of eminent domain; and (2) adapt the property for the purpose for which it was acquired; not later than six years after the payment of the award or judgment for damages occurs, the condemnor forfeits all rights in the property as if the procedure to take the property had not begun. Establishes procedures for using eminent domain to transfer ownership or control of real property between private persons for uses that are not public uses, including: (1) limiting the use of eminent domain only to certain types of property; (2) requiring mediation; (3) requiring that the acquisition of the property will accomplish more than only increasing the property tax base of a government entity; (4) requiring the payment of a premium to acquire certain types of property; (5) requiring the condemnor to pay the attorney's fees of certain owners; and (6) requiring the payment of certain other damages, if applicable, including business losses. Prohibits a state agency or political subdivision from requiring that a lawfully erected sign be removed or altered as a condition of issuing a permit, license, variance, or other order concerning land use development unless the sign owner receives reasonable compensation for the loss of the sign. Requires a condemnor to pay a landowner's reasonable attorney's fees up to \$100,000. Specifies that certain persons authorized to exercise eminent domain may only do so to accomplish the essential delivery of services. Prohibits libraries from exercising eminent domain unless a specified legislative body in the library district adopts a resolution specifically approving the use of eminent domain for a particular purpose. Prohibits a privately owned cemetery from exercising eminent domain. Establishes a study committee to study eminent domain issues. Makes other changes and conforming amendments.

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February 17, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1010

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-13-2-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]: **Sec. 1.5. A state agency or political subdivision may not**
4 **require that a lawfully erected sign be removed or altered as a**
5 **condition of issuing:**
6 (1) a permit;
7 (2) a license;
8 (3) a variance; or
9 (4) any other order concerning land use or development;
10 **unless the state agency or political subdivision provides reasonable**
11 **compensation to the owner of the sign for the loss of the sign.**
12 SECTION 2. IC 23-14-60-1 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) If:
14 (1) any number of persons have:
15 (A) acted together as an association or corporation;

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- 1 (B) acquired, as an association or corporation, land for
 2 cemetery purposes;
 3 (C) sold and granted to persons the right to bury the dead in
 4 lots located on the land; and
 5 (D) actually managed and controlled the land as a cemetery for
 6 at least thirty (30) years; but
 7 (2) the organization that the persons attempted to establish as a
 8 corporation or cemetery association is defective and incomplete
 9 because of a failure to comply with the formalities required by
 10 law in force at some time since the original parties first assumed
 11 to act as an association or corporation;

12 the owners of the right to bury the dead on lots in the cemetery and
 13 those who may acquire the right become and continue to be a cemetery
 14 association or corporation from March 14, 1913.

15 (b) The owners of the right to bury the dead on lots in a cemetery
 16 referred to in subsection (a) have all the rights and powers of a
 17 cemetery association or corporation organized under this article,
 18 IC 23-1, or IC 23-17. ~~including the power of eminent domain under~~
 19 ~~IC 32-24-1.~~

20 SECTION 3. IC 23-14-75-1 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter
 22 applies to ~~the following~~:

- 23 ~~(1) A:~~
 24 ~~(A) city;~~
 25 ~~(B) town;~~
 26 ~~(C) township;~~
 27 ~~(D) corporation or association; or~~
 28 ~~(E) another owner;~~
 29 ~~that owns or controls a public cemetery that has been in existence~~
 30 ~~for at least thirty (30) years.~~

- 31 ~~(2) A:~~
 32 ~~(A) city, town, or township; or~~
 33 ~~(B) corporation or association a city, town or township that:~~
 34 ~~(1) owns a cemetery that has been in existence for at least thirty~~
 35 ~~(30) years; or~~
 36 ~~that (2) desires to own a public cemetery.~~

37 SECTION 4. IC 23-14-75-2 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. If land has not
 39 been appropriated or set apart by the owners by platting for a public
 40 cemetery and it is necessary to purchase real estate for the cemetery:

- 41 (1) the legislative body of the city or town; **or**
 42 (2) the executive of the township;

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~~(3) the trustees or directors of the corporation or association; or~~
~~(4) the other owners;~~

~~have~~ **has** the power of eminent domain to condemn and appropriate the land for cemetery purposes under proceedings provided by statute.

SECTION 5. IC 32-24-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any person that may exercise the power of eminent domain for any public use under any statute may exercise the power only in the manner provided in this article, except as otherwise provided by law.

(b) Before proceeding to condemn, the person:

(1) may enter upon any land to examine and survey the property sought to be acquired; and

(2) must make an effort to purchase for the use intended the land, right-of-way, easement, or other interest, in the property.

(c) The effort to purchase under subsection (b)(2) must include the following:

(1) Establishing a proposed purchase price for the property.

(2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.

(3) Conducting good faith negotiations with the owner of the property.

~~(c)~~ **(d)** If the land or interest in the land, or property or right is owned by a person who is an incapacitated person (as defined in IC 29-3-1-7.5) or less than eighteen (18) years of age, the person seeking to acquire the property may purchase the property from the guardian of the incapacitated person or person less than eighteen (18) years of age. If the purchase is approved by the court appointing the guardian and the approval is written upon the face of the deed, the conveyance of the property purchased and the deed made and approved by the court are valid and binding upon the incapacitated person or persons less than eighteen (18) years of age.

~~(d)~~ **(e)** The deed given, when executed instead of condemnation, conveys only the interest stated in the deed.

~~(e)~~ **(f)** If property is taken by proceedings under this article, the entire fee simple title may be taken and acquired. ~~if the property is taken for any purpose other than a right-of-way.~~

SECTION 6. IC 32-24-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) As a condition precedent to filing a complaint in condemnation, and except for an action brought under IC 8-1-13-19 (repealed), a condemnor may enter upon the property as provided in this chapter and must, at least thirty (30) days before filing a complaint, make an offer to purchase the

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property in the form prescribed in subsection (c). The offer must be served personally or by certified mail upon:

- (1) the owner of the property sought to be acquired; or
- (2) the owner's designated representative.

(b) If the offer cannot be served personally or by certified mail, or if the owner or the owner's designated representative cannot be found, notice of the offer shall be given by publication in a newspaper of general circulation in the county in which the property is located or in the county where the owner was last known to reside. The notice must be in the following form:

NOTICE

TO: _____, _____ (owner(s)),
 _____ (condemnor) needs your property for
 a _____ (description
 of project), and will need to acquire the following from you:

_____ (general
 description of the property to be acquired). We have made you a formal
 offer for this property that is now on file in the Clerk's Office in the
 _____ County Court House. Please pick up the offer. If you do not
 respond to this notice or accept the offer by ____ (a date 30 days from
 1st date of publication) 20____, we shall file a suit to condemn the
 property.

 Condemnor

The condemnor must file the offer with the clerk of the circuit court with a supporting affidavit that diligent search has been made and that the owner cannot be found. The notice shall be published twice as follows:

- (1) One (1) notice immediately.
- (2) A subsequent publication at least seven (7) days and not more than twenty-one (21) days after the publication under subdivision (1).

(c) The offer to purchase must be in the following form:

UNIFORM PROPERTY OR EASEMENT ACQUISITION OFFER

_____ (condemnor) is authorized by Indiana law to obtain your property or an easement across your property for certain public purposes. _____ (condemnor) needs (your property) (an easement across your property) for a _____ (brief description of the project) and needs to take _____ (legal description of the property or easement to be taken; the legal description may be made on a separate sheet and

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attached to this document if additional space is required)

It is our opinion that the fair market value of the (property) (easement) we want to acquire from you is \$ _____, and, therefore, _____ (condemnor) offers you \$ _____ for the above described (property) (easement). You have ~~twenty-five (25)~~ **thirty (30)** days from this date to accept or reject this offer. If you accept this offer, you may expect payment in full within ninety (90) days after signing the documents accepting this offer and executing the easement, and provided there are no difficulties in clearing liens or other problems with title to land. Possession will be required thirty (30) days after you have received your payment in full.

HERE IS A BRIEF SUMMARY OF YOUR OPTIONS AND LEGALLY PROTECTED RIGHTS:

1. By law, _____ (condemnor) is required to make a good faith effort to purchase (your property) (an easement across your property).
2. You do not have to accept this offer **and** _____ **(condemnor) is not required to agree to your demands.**
3. However, if you do not accept this offer, and we cannot come to an agreement on the acquisition of (your property) (an easement), _____ (condemnor) has the right to file suit to condemn and acquire the (property) (easement) in the county in which the property is located.
4. You have the right to seek advice of an attorney, real estate appraiser, or any other person of your choice on this matter.
5. You may object to the public purpose and necessity of this project.
6. If _____ (condemnor) files a suit to condemn and acquire (your property) (an easement) and the court grants its request to condemn, the court will then appoint three appraisers who will make an independent appraisal of the (property) (easement) to be acquired.
7. If we both agree with the court appraisers' report, then the matter is settled. However, if either of us disagrees with the appraisers' report to the court, either of us has the right to ask for a trial to decide what should be paid to you for the (property) (easement) condemned.
8. If the court appraisers' report is not accepted by either of us, then _____ (condemnor) has the legal option of depositing the amount of the court appraisers' evaluation with the court. And if such a deposit is made with the court, _____ (condemnor) is legally entitled to immediate possession of the

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(property) (easement). You may, subject to the approval of the court, make withdrawals from the amount deposited with the court. Your withdrawal will in no way affect the proceedings of your case in court, except that, if the final judgment awarded you is less than the withdrawal you have made from the amount deposited, you will be required to pay back to the court the amount of the withdrawal in excess of the amount of the final judgment.

9. The trial will decide the full amount of damages you are to receive. Both of us will be entitled to present legal evidence supporting our opinions of the fair market value of the property or easement. The court's decision may be more or less than this offer. You may employ, at your cost, appraisers and attorneys to represent you at this time or at any time during the course of the proceeding described in this notice. (The condemnor may insert here any other information pertinent to this offer or required by circumstances or law).

10. If you have any questions concerning this matter you may contact us at:

(full name, mailing and street address, and phone of the condemnor)

This offer was made to the owner(s):

_____ of _____,
 _____ of _____,
 _____ of _____,
 _____ of _____,

on the _____ day of _____ 20____,

BY:

 (signature)

 (printed name and title)

Agent of:

 (condemnor)

If you decide to accept the offer of \$ _____ made by _____ (condemnor) sign your name below and mail this form to the address indicated above. An additional copy of this offer has been provided for your file.

ACCEPTANCE OF OFFER

I (We), _____, _____, _____,
 owner(s) of the above described property or interest in property,

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hereby accept the offer of \$ _____ made by _____
(condemnor) on this _____ day of _____, 20____.

NOTARY'S CERTIFICATE

STATE OF _____)

)SS:

COUNTY OF _____)

Subscribed and sworn to before me this _____ day of
_____, 20____.

My Commission Expires: _____

(Signature)

(Printed) NOTARY PUBLIC

(d) If the condemnor has a compelling need to enter upon property to restore utility or transportation services interrupted by disaster or unforeseeable events, the provisions of subsections (a), (b), and (c) do not apply for the purpose of restoration of utility or transportation services interrupted by the disaster or unforeseeable events. However, the condemnor shall be responsible to the property owner for all damages occasioned by the entry, and the condemnor shall immediately vacate the property entered upon as soon as utility or transportation services interrupted by the disaster or unforeseeable event have been restored.

SECTION 7. IC 32-24-1-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. (a) Except as provided in sections 5.8 and 5.9 of this chapter, this section applies to every person that may exercise the power of eminent domain.**

(b) If:

(1) a person that may exercise the power of eminent domain submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than two (2) years after the date the person submitted the written acquisition

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offer to the owner.

(c) If a person that may exercise the power of eminent domain fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least three (3) years after the date the two (2) year period described in subsection (b) expires.

SECTION 8. IC 32-24-1-5.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.8. (a) This section applies only to:

(1) the Indiana department of transportation when the department seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a:

(A) state highway; or

(B) toll road project or toll bridge; and

(2) any other person that may exercise the power of eminent domain when the person seeks to acquire a parcel of land or a property right for the construction, reconstruction, improvement, maintenance, or repair of a feeder road for an Indiana department of transportation project described in subdivision (1) if the construction, reconstruction, improvement, maintenance, or repair of the feeder road begins not later than five (5) years from the conclusion of the project.

(b) If:

(1) the Indiana department of transportation or other person described in subsection (a)(2) submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the department or other person shall file a complaint under this article to acquire the parcel by the exercise of eminent domain not more than six (6) years after the date the department or other person submitted the written acquisition offer to the owner.

(c) If the Indiana department of transportation or other person fails to meet the requirements described in subsection (b) concerning a parcel of real estate, the department or other person may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same or a substantially similar project for at least three (3) years after the

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1 date the six (6) year period described in subsection (b) expires.

2 SECTION 9. IC 32-24-1-5.9 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
4 UPON PASSAGE]: Sec. 5.9. (a) As used in this section, "public
5 utility" means a public utility, municipally owned utility,
6 cooperatively owned utility, joint agency created under IC 8-1-2.2,
7 municipal sanitation department operating under IC 36-9-23,
8 sanitary district operating under IC 36-9-25, or an agency
9 operating as a stormwater utility.

10 (b) This section applies only to a public utility or pipeline
11 company.

12 (c) If:

13 (1) a public utility or pipeline company submits a written
14 acquisition offer to the owner of a parcel of real estate under
15 section 5 of this chapter; and

16 (2) the owner rejects the offer in writing;

17 the public utility or pipeline company, to acquire the parcel by the
18 exercise of eminent domain, must file a complaint under this
19 article, not more than six (6) years after the date on which the
20 public utility or pipeline company submitted the written
21 acquisition offer to the owner.

22 (d) If a public utility or pipeline company fails to meet the
23 requirements set forth in subsection (c) concerning a parcel of real
24 estate, the public utility or pipeline company may not initiate an
25 action under this article to acquire the parcel through the power
26 of eminent domain for the same project or a substantially similar
27 project for at least two (2) years after the date on which the six (6)
28 year period described in subsection (c) expires.

29 SECTION 10. IC 32-24-1-7 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The notice,
31 upon its return, must show its:

32 (1) service for ten (10) days; or

33 (2) proof of publication for three (3) successive weeks in a weekly
34 newspaper of general circulation printed and published in the
35 English language in the county in which the property sought to be
36 acquired is located.

37 The last publication of the notice must be five (5) days before the day
38 set for the hearing.

39 (b) The clerk of the court in which the proceedings are pending,
40 upon the first publication of the notice, shall send to the post office
41 address of each nonresident owner whose property will be affected by
42 the proceedings a copy of the notice, if the post office address of the

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owner or owners can be ascertained by inquiry at the office of the treasurer of the county.

(c) The court, being satisfied of the regularity of the proceedings and the right of the plaintiff to exercise the power of eminent domain for the use sought, shall appoint: ~~three (3)~~

(1) one (1) disinterested freeholders freeholder of the county; and

(2) two (2) appraisers licensed under IC 25-34.1 who are residents of Indiana;

to assess the damages, or the benefits and damages, as the case may be, that the owner or owners severally may sustain, or be entitled to, by reason of the acquisition. **One (1) of the appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the property.**

SECTION 11. IC 32-24-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A defendant may object to the proceedings:

(1) because the court does not have jurisdiction either of the subject matter or of the person;

(2) because the plaintiff does not have the right to exercise the power of eminent domain for the use sought; or

(3) for any other reason disclosed in the complaint or set up in the objections.

(b) Objections under subsection (a) must be:

(1) in writing;

(2) separately stated and numbered; and

(3) filed not later than ~~the first appearance of~~ **thirty (30) days after the date the notice required in section 6 of this chapter is served on the defendant. However, the court may extend the period for filing objections by not more than thirty (30) days upon written motion of the defendant.**

(c) The court may not allow pleadings in the cause other than the complaint, any objections, and the written exceptions provided for in section 11 of this chapter. However, the court may permit amendments to the pleadings.

(d) If an objection is sustained, the plaintiff may amend the complaint or may appeal from the decision in the manner that appeals are taken from final judgments in civil actions. All the parties shall take notice and are bound by the judgment in an appeal.

(e) If the objections are overruled, the court shall appoint appraisers as provided for in this chapter. Any defendant may appeal the interlocutory order overruling the objections and appointing appraisers

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in the manner that appeals are taken from final judgments in civil actions upon filing with the circuit court clerk a bond:

- (1) with the penalty that the court fixes;
- (2) with sufficient surety;
- (3) payable to the plaintiff; and
- (4) conditioned for the diligent prosecution of the appeal and for the payment of the judgment and costs that may be affirmed and adjudged against the appellants.

The appeal bond must be filed not later than ten (10) days after the appointment of the appraisers.

(f) All the parties shall take notice of and be bound by the judgment in the appeal.

(g) The transcript must be filed in the office of the clerk of the supreme court not later than thirty (30) days after the filing of the appeal bond. The appeal does not stay proceedings in the cause.

SECTION 12. IC 32-24-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) Not later than ~~ten (10)~~ **thirty (30)** days before a trial involving the issue of damages, the plaintiff shall, and a defendant may, file and serve on the other party an offer of settlement. Not more than five (5) days after the date offer of settlement is served, the party served may respond by filing and serving upon the other party an acceptance or a counter offer of settlement. The offer must state that it is made under this section and specify the amount, exclusive of interest and costs, that the party serving the offer is willing to accept as just compensation and damages for the property sought to be acquired. The offer or counter offer supersedes any other offer previously made under this chapter by the party.

(b) An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer before the trial on the issue of the amount of damages begins.

(c) If the offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under section 14 of this chapter.

(d) This section does not limit or restrict the right of a defendant to payment of any amounts authorized by law in addition to damages for the property taken from the defendant.

(e) This section does not apply to an action brought under IC 8-1-13-19 (repealed).

SECTION 13. IC 32-24-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) Except as provided in subsection (b), the plaintiff shall pay the costs of the

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proceedings.

(b) If there is a trial, the additional costs caused by the trial shall be paid as ordered by the court. However, if there is a trial and the amount of damages awarded to the defendant by the judgment, exclusive of interest and costs, is greater than the amount specified in the last offer of settlement made by the plaintiff under section 12 of this chapter, the court shall allow the defendant the defendant's litigation expenses in an amount not to exceed two thousand five hundred dollars (\$2,500).

(b) If the owner of a parcel of real property incurs attorney's fees because a plaintiff seeks to acquire the parcel through the exercise of eminent domain, the plaintiff shall reimburse the owner's reasonable attorney's fees. However, the total amount of attorney's fees that a plaintiff may be required to reimburse an owner under this subsection may not exceed one hundred thousand dollars (\$100,000).

SECTION 14. IC 32-24-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) If the person seeking to take property under this article fails:

(1) to pay the assessed damages **and attorney's fees payable in accordance with section 14 of this chapter** not later than one (1) year after the appraisers' report is filed, if exceptions are not filed to the report;

(2) to pay:

(A) the damages assessed **and attorney's fees payable in accordance with section 14 of this chapter** if exceptions are filed to the appraisers' report and the exceptions are not sustained; or

(B) the damages assessed **and attorney's fees payable in accordance with section 14 of this chapter** and costs if exceptions are filed to the appraisers' report and the exceptions are sustained;

not later than one (1) year after the entry of the judgment, if an appeal is not taken from the judgment;

(3) to pay the damages assessed **and attorney's fees payable in accordance with section 14 of this chapter** or the judgment rendered in the trial court not later than one (1) year after final judgment is entered in the appeal if an appeal is taken from the judgment of the trial court; or

(4) to take possession of the property and adapt the property for the purpose for which it was acquired not later than ~~five (5)~~ **six (6)** years after the payment of the award or judgment for damages, except where a fee simple interest in the property is authorized to

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1 be acquired and is acquired;
 2 the person seeking to acquire the property forfeits all rights in the
 3 property as fully and completely as if the procedure to take the property
 4 had not begun.

5 (b) An action to declare a forfeiture under this section may be
 6 brought by any person having an interest in the property sought to be
 7 acquired, or the question of the forfeiture may be raised and determined
 8 by direct allegation in any subsequent proceedings, by any other person
 9 to acquire the property for a public use. In the subsequent proceedings
 10 the person seeking the previous acquisition or the person's proper
 11 representatives, successors, or assigns shall be made parties.

12 SECTION 15. IC 32-24-2-17 IS ADDED TO THE INDIANA
 13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE UPON PASSAGE]: **Sec. 17. A landowner who incurs**
 15 **attorney's fees through the exercise of eminent domain under this**
 16 **chapter is entitled to reasonable attorney's fees in accordance with**
 17 **IC 32-24-1-14.**

18 SECTION 16. IC 32-24-3-4 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) After the
 20 appraisers file their report, any of the defendants may, within a
 21 reasonable time fixed by the court, file exceptions to the report,
 22 alleging that the appraisal of the property, as made by the
 23 appraisers, is not the true cash value of the property. If exceptions are
 24 filed, a trial on the exceptions shall be held by the court or before a
 25 jury, if asked by either party.

26 (b) The circuit court clerk shall give notice of filing of the
 27 appraisers' report to all known parties to the action and their attorneys
 28 of record by certified mail.

29 (c) Upon the trial of the exceptions, the court may revise, correct,
 30 amend, or confirm the appraisal in accordance with the finding of
 31 the court or verdict of the jury.

32 (d) The court shall apportion the costs accruing in the proceedings
 33 as justice may require. **However, a landowner who incurs attorney's**
 34 **fees through the exercise of eminent domain under this chapter is**
 35 **entitled to reasonable attorney's fees in accordance with**
 36 **IC 32-24-1-14.**

37 (e) Changes of venue may be had as in other cases.

38 SECTION 17. IC 32-24-4-1 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person,
 40 firm, partnership, limited liability company, or corporation authorized
 41 to do business in Indiana and authorized to:

42 (1) furnish, supply, transmit, transport or distribute electrical

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energy, gas, oil, petroleum, water, heat, steam, hydraulic power,
or communications by telegraph or telephone to the public or to
any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals,
public landings, wharves, ferries, dams, aqueducts, street
railways, or interurban railways for the use of the public or for the
use of any town or city;

may take, acquire, condemn, and appropriate land, real estate, or any
interest in the land or real estate **to accomplish the essential delivery
of services described in subdivisions (1) and (2).**

(b) A person described in subsection (a) has all accommodations,
rights, and privileges necessary to accomplish the use for which the
property is taken. A person acting under subsection (a) may use
acquired, condemned, or appropriated land to construct railroad siding,
switch, or industrial tracks connecting its plant or facilities with the
tracks of any common carrier.

SECTION 18. IC 32-24-4.5 IS ADDED TO THE INDIANA CODE
AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
UPON PASSAGE]:

**Chapter 4.5. Procedures for Transferring Ownership or Control
of Real Property Between Private Persons**

Sec. 1. (a) As used in this section, "public use" means the:

(1) possession, occupation, and enjoyment of a parcel of real
property by the general public or a public agency for the
purpose of providing the general public with fundamental
services, including the construction, maintenance, and
reconstruction of highways, bridges, airports, ports,
intermodal facilities, parks, and publicly owned venues;

(2) leasing of a highway, bridge, airport, port, intermodal
facility, park, or publicly owned venue by a public agency that
retains ownership of the parcel by written lease with right of
forfeiture; or

(3) use of a parcel of real property to create or operate a
public utility, an energy utility (as defined in IC 8-1-2.5-2), or
a pipeline company.

The term does not include the public benefit of economic
development, including an increase in a tax base, tax revenues,
employment, or general economic health.

(b) This chapter applies to a condemnor that exercises the
power of eminent domain to acquire a parcel of real property:

(1) from a private person;

(2) with the intent of ultimately transferring ownership or

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control to another private person; and

(3) for a use that is not a public use.

(c) This chapter does not apply twenty (20) years after the acquisition of the real property.

Sec. 2. As used in this chapter, "condemnor" means a person authorized to exercise the power of eminent domain.

Sec. 3. As used in this chapter, "parcel" means the real property that is under common ownership and that the condemning authority is seeking to acquire.

Sec. 4. As used in this chapter, "private person" means a person other than a public agency.

Sec. 5. As used in this chapter, "public agency" means:

(1) a state agency (as defined in IC 4-13-1-1);

(2) a unit (as defined in IC 36-1-2-23);

(3) a body corporate and politic created by state statute;

(4) a school corporation (as defined in IC 20-26-2-4); or

(5) another governmental unit or district with eminent domain powers.

The term does not include a state educational institution (as defined in IC 20-12-0.5-1).

Sec. 6. As used in this chapter, "relocation costs" mean relocation expenses payable in accordance with the federal Uniform Relocation Assistance Act (42 U.S.C. 4601 through 42 U.S.C. 4655).

Sec. 7. A condemnor may acquire a parcel of real property by the exercise of eminent domain under this chapter only if all the following conditions are met:

(1) At least one (1) of the following conditions exists on the parcel of real property:

(A) The parcel contains a structure that, because of:

(i) physical condition;

(ii) use; or

(iii) occupancy;

constitutes a public nuisance.

(B) The parcel contains a structure that is unfit for human habitation or use because the structure:

(i) is dilapidated;

(ii) is unsanitary;

(iii) is unsafe;

(iv) is vermin infested; or

(v) does not contain the facilities or equipment required by applicable building codes or housing codes.

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(C) The parcel contains a structure that is:

(i) a fire hazard; or

(ii) otherwise dangerous to the safety of persons or property.

(D) The parcel contains a structure that is not fit for its intended use because:

(i) the utilities;

(ii) the sewerage;

(iii) the plumbing;

(iv) the heating; or

(v) any other similar services or facilities;

have been disconnected, destroyed, removed, or rendered ineffective.

(E) The parcel:

(i) is located in a substantially developed neighborhood;

(ii) is vacant or unimproved; and

(iii) because of neglect or lack of maintenance, has become a place for the accumulation of trash, garbage, or other debris or become infested by rodents or other vermin, and the neglect or lack of maintenance has not been corrected by the owner of the parcel within a reasonable time after the owner receives notice of the accumulation or infestation.

(F) The parcel and any improvements on the parcel are the subject of tax delinquencies that exceed the assessed value of the parcel and its improvements.

(G) The parcel poses a threat to public health or safety because the parcel contains environmental contamination.

(H) The parcel has been abandoned.

(2) The acquisition of the parcel of real property through the exercise of eminent domain is expected to accomplish more than only increasing the property tax base of a government entity.

(3) If the owner files a request for mediation at the time the owner files an objection or exception to an eminent domain proceeding, the court shall appoint a mediator not later than ten (10) days after the request for mediation is filed. Mediation must be concluded not later than ninety (90) days after the appointment of the mediator. A condemnor shall engage in good faith mediation with the owner, including the consideration of a reasonable alternative to the exercise of eminent domain. The condemnor shall pay the costs of the

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mediator.

A determination concerning whether a condition described in this section has been met is subject to judicial review in an eminent domain proceeding concerning the parcel of real property.

Sec. 8. Notwithstanding IC 32-24-1, a condemnor that acquires a parcel of real property through the exercise of eminent domain under this chapter shall compensate the owner of the parcel as follows:

(1) For agricultural land:

(A) either:

(i) payment to the owner equal to one hundred twenty-five percent (125%) of the fair market value of the parcel as determined under IC 32-24-1; or

(ii) upon the request of the owner and if the owner and condemnor both agree, transfer to the owner of an ownership interest in agricultural land that is equal in acreage to the parcel acquired through the exercise of eminent domain;

(B) payment of any other damages as determined under IC 32-24-1, including a loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

(2) For a parcel of real property occupied by the owner as a residence:

(A) payment to the owner equal to one hundred fifty percent (150%) of the fair market value of the parcel as determined under IC 32-24-1;

(B) payment of any other damages as determined under IC 32-24-1, including a loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

(3) For a parcel of real property not described in subdivision (1) or (2):

(A) payment to the owner equal to one hundred percent (100%) of the fair market value of the parcel as determined under IC 32-24-1;

(B) payment of any other damages as determined under IC 32-24-1, including a loss incurred in a trade or business that is attributable to the exercise of eminent domain; and

(C) payment of the owner's relocation costs, if any.

Sec. 9. If the owner of a parcel of real property incurs attorney's fees because a condemnor seeks to acquire the parcel through the

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exercise of eminent domain under this chapter, the condemnor shall reimburse the owner's reasonable attorney's fees. However, the total amount of attorney's fees that a condemnor may be required to reimburse an owner under this section may not exceed one hundred thousand dollars (\$100,000).

SECTION 19. IC 32-24-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 7. Procedure for Libraries

Sec. 1. This chapter applies to the exercise of eminent domain by a library board (as defined in IC 36-12-1-3). Notwithstanding any other law, a library board may exercise eminent domain only if it complies with this chapter.

Sec. 2. A library board may exercise eminent domain only if one (1) of the following legislative bodies adopts a resolution specifically authorizing the library board to exercise eminent domain over a particular parcel of land for a specific purpose:

(1) If the library district is located entirely within the corporate boundaries of a municipality, the legislative body of the municipality.

(2) If the library district:

(A) is not described by subdivision (1); and

(B) is located entirely within the boundaries of a township; the legislative body of the township.

(3) If the library district is not described by subdivision (1) or (2), the legislative body of each county in which the library district is located.

Sec. 3. The resolution described in section 2 of this chapter must specifically describe:

(1) the parcel of land that the library board seeks to acquire by exercising eminent domain;

(2) the purpose for which the parcel of land is to be acquired; and

(3) why the exercise of eminent domain is necessary to accomplish the library board's purpose.

SECTION 20. IC 36-7-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 5.5.** A unit may not require that a lawfully erected sign be removed or altered as a condition of issuing:

(1) a permit;

(2) a license;

(3) a variance; or

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1 **(4) any other order concerning land use or development;**
 2 **unless the unit provides reasonable compensation to the owner of**
 3 **the sign for the loss of the sign.**

4 SECTION 21. IC 36-7-14-32.5 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 32.5. (a) The
 6 commission may acquire a parcel of real property by the exercise of
 7 eminent domain when the real property has all of the following
 8 characteristics:

9 (1) The real property is an unsafe building (as defined in
 10 ~~IC 36-7-9-4~~) and is subject to an order issued under ~~IC 36-7-9-5~~.

11 ~~(2) The owner of the real property has not complied with the order~~
 12 ~~issued under IC 36-7-9-5.~~

13 ~~(3) The real property is not being used as a residence or for a~~
 14 ~~business enterprise.~~

15 **meets at least one (1) of the conditions described in**
 16 **IC 32-24-4.5-7(1).**

17 ~~(4)~~ **(2)** The real property is capable of being developed or
 18 rehabilitated to provide affordable housing for low or moderate
 19 income families or to provide other development that will benefit
 20 or serve low or moderate income families.

21 ~~(5)~~ **(3)** The ~~unsafe~~ condition of the real property has a negative
 22 impact on the use or value of the neighboring properties or other
 23 properties in the community.

24 (b) The commission or the commission's designated hearing
 25 examiner shall conduct a public meeting to determine whether a parcel
 26 of real property has the characteristics set forth in subsection (a). Each
 27 person holding a fee or life estate interest of record in the property must
 28 be given notice by first class mail of the time and date of the hearing at
 29 least ten (10) days before the hearing and is entitled to present evidence
 30 and make arguments at the hearing.

31 (c) If the commission considers it necessary to acquire real property
 32 under this section, the commission shall adopt a resolution setting out
 33 the commission's determination to exercise that power and directing the
 34 commission's attorney to file a petition in the name of the city on behalf
 35 of the department in the circuit or superior court with jurisdiction in the
 36 county.

37 (d) Eminent domain proceedings under this section are governed by
 38 IC 32-24.

39 (e) The commission shall use real property acquired under this
 40 section for one (1) of the following purposes:

41 (1) Sale in an urban homestead program under IC 36-7-17.

42 (2) Sale to a family whose income is at or below the county's

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median income for families.

(3) Sale or grant to a neighborhood development corporation with a condition in the granting clause of the deed requiring the nonprofit development corporation to lease or sell the property to a family whose income is at or below the county's median income for families or to cause development that will serve or benefit families whose income is at or below the unit's median income for families.

(4) Any other purpose appropriate under this chapter so long as it will serve or benefit families whose income is at or below the unit's median income for families.

(f) A neighborhood development corporation or nonprofit corporation that receives property under this section must agree to rehabilitate or otherwise develop the property in a manner that is similar to and consistent with the use of the other properties in the area served by the corporation.

SECTION 22. IC 36-7-15.1-22.5, AS AMENDED BY P.L.185-2005, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22.5. (a) The commission may acquire a parcel of real property by the exercise of eminent domain when the following conditions exist:

(1) The real property is an unsafe premises (as defined in IC 36-7-9) and is subject to an order issued under IC 36-7-9 or a notice of violation issued by the county's health and hospital corporation under its powers under IC 16-22-8.

(2) The real property is not being used as a residence or for a business enterprise:

meets at least one (1) of the conditions described in IC 32-24-4.5-7(1).

~~(3)~~ (2) The real property is capable of being developed or rehabilitated to provide affordable housing for low or moderate income families or to provide other development that will benefit or serve low or moderate income families.

~~(4)~~ (3) The real property suffers from one (1) or more of the conditions listed in IC 36-7-1-3, resulting in a negative impact on the use or value of the neighboring properties or other properties in the community.

(b) The commission or its designated hearing examiner shall conduct a public meeting to determine whether the conditions set forth in subsection (a) exist relative to a parcel of real property. Each person holding a fee or life estate interest of record in the property must be given notice by first class mail of the time and date of the hearing at

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1 least ten (10) days before the hearing, and is entitled to present
2 evidence and make arguments at the hearing.

3 (c) If the commission considers it necessary to acquire real property
4 under this section, it shall adopt a resolution setting out its
5 determination to exercise that power and directing its attorney to file
6 a petition in the name of the city on behalf of the department in the
7 circuit or superior court in the county.

8 (d) Eminent domain proceedings under this section are governed by
9 IC 32-24.

10 (e) The commission shall use real property acquired under this
11 section for one (1) of the following purposes:

12 (1) Sale in an urban homestead program under IC 36-7-17.

13 (2) Sale to a family whose income is at or below the county's
14 median income for families.

15 (3) Sale or grant to a neighborhood development corporation or
16 other nonprofit corporation, with a condition in the granting
17 clause of the deed requiring the nonprofit organization to lease or
18 sell the property to a family whose income is at or below the
19 county's median income for families or to cause development that
20 will serve or benefit families whose income is at or below the
21 county's median income for families. However, a nonprofit
22 organization is eligible for a sale or grant under this subdivision
23 only if the county fiscal body has determined that the nonprofit
24 organization meets the criteria established under subsection (f).

25 (4) Any other purpose appropriate under this chapter so long as
26 it will serve or benefit families whose income is at or below the
27 county's median income for families.

28 (f) The county fiscal body shall establish criteria for determining the
29 eligibility of neighborhood development corporations and other
30 nonprofit corporations for sales and grants of real property under
31 subsection (e)(3). A neighborhood development corporation or other
32 nonprofit corporation may apply to the county fiscal body for a
33 determination concerning the corporation's compliance with the criteria
34 established under this subsection.

35 (g) A neighborhood development corporation or nonprofit
36 corporation that receives property under this section must agree to
37 rehabilitate or otherwise develop the property in a manner that is
38 similar to and consistent with the use of the other properties in the area
39 served by the corporation.

40 **SECTION 23. [EFFECTIVE UPON PASSAGE] (a) As used in this**
41 **SECTION, "committee" refers to the interim study committee on**
42 **eminent domain established by this SECTION.**

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1 (b) There is established the interim study committee on eminent
2 domain. The committee shall study issues related to the exercise of
3 eminent domain.

4 (c) The committee may meet as often as necessary to carry out
5 its duties under this SECTION.

6 (d) The committee shall submit a final report of the results of its
7 study to the legislative council before November 1, 2007.

8 (e) The affirmative votes of a majority of the voting members
9 appointed to the committee are required for the committee to take
10 action on any measure, including final reports.

11 (f) Except as otherwise specifically provided by this act, the
12 committee shall operate under the rules of the legislative council.
13 All funds necessary to carry out this act shall be paid from
14 appropriations to the legislative council and legislative services
15 agency.

16 (g) This SECTION expires November 2, 2007.

17 SECTION 24. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1010, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 15, delete "Submitting" and insert "**Establishing**".

Page 1, line 15, delete "to the owner of" and insert "**for**".

Page 6, line 29, delete "five (5)" and insert "**three (3)**".

Page 7, line 42, delete "professionally engaged in making appraisals;" and insert "**licensed or certified as an appraiser under IC 25-34.1-8;**".

Page 8, line 1, delete "trained as an appraiser and".

Page 8, line 15, strike "the first appearance of" and insert "**thirty (30) days after the date the notice required in section 6 of this chapter is served on**".

Page 12, line 16, delete "the cost of acquiring the parcel" and insert "**by more than five percent (5%) the total cost of acquiring all the parcels of real property that are necessary to complete the project that includes the parcel of real property described in subdivision (1);**".

Page 12, delete lines 17 through 18.

Page 12, line 21, delete "will" and insert "**is expected to**".

Page 12, line 35, delete "the" and insert "**any other**".

Page 12, line 35, delete ", if any,".

Page 12, line 38, delete ":" and insert "**as a residence:**".

Page 12, line 42, delete "the" and insert "**any other**".

Page 12, line 42, delete ", if any,".

Page 13, line 8, delete "the" and insert "**any other**".

Page 13, line 8, delete ", if any,".

Page 13, line 14, after "any" insert "**reasonable**".

and when so amended that said bill do pass.

(Reference is to HB 1010 as introduced.)

FOLEY, Chair

Committee Vote: yeas 10, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1010 be amended to read as follows:

Page 12, line 38, after "IC 32-24-1" insert ", **not to exceed two hundred and fifty thousand dollars (\$250,000)**".

Page 13, line 4, after "IC 32-24-1" insert ", **not to exceed two hundred and fifty thousand dollars (\$250,000)**".

Page 13, line 12, after "IC 32-24-1" insert ", **not to exceed two hundred and fifty thousand dollars (\$250,000)**".

Page 13, line 17, delete "any reasonable".

Page 13, line 17, delete "incurred by the" and insert":

(1) in an amount equal to ten percent (10%) of the costs of the acquisition

of the real property; and

(2) not to exceed two hundred and fifty thousand dollars (\$250,000)".

Page 13, delete line 18.

(Reference is to HB 1010 as printed January 11, 2006.)

HINKLE

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1010 be amended to read as follows:

Page 10, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 10. IC 32-24-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) **Except as provided in section 1.5 of this chapter**, a person, firm, partnership, limited liability company, or corporation authorized to do business in Indiana and authorized to:

(1) furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water, heat, steam, hydraulic power, or communications by telegraph or telephone to the public or to any town or city; or

(2) construct, maintain or operate turnpikes, toll bridges, canals, public landings, wharves, ferries, dams, aqueducts, street railways, or interurban railways for the use of the public or for the use of any town or city;

may take, acquire, condemn, and appropriate land, real estate, or any

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interest in the land or real estate.

(b) A person described in subsection (a) has all accommodations, rights, and privileges necessary to accomplish the use for which the property is taken. A person acting under subsection (a) may use acquired, condemned, or appropriated land to construct railroad siding, switch, or industrial tracks connecting its plant or facilities with the tracks of any common carrier.

SECTION 11. IC 32-24-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. A private utility that:**

(1) holds a certificate of territorial authority to provide sewage disposal service; and

(2) provides or will provide sewage disposal service to less than five hundred (500) customers;

may not exercise the power of eminent domain to take, acquire, condemn, or appropriate land, real estate, or any interest in the land or real estate, including an easement or a right-of-way."

Renumber all SECTIONS consecutively.

(Reference is to HB 1010 as printed January 11, 2006.)

ROBERTSON

HOUSE MOTION

Mr. Speaker: I move that House Bill 1010 be amended to read as follows:

Page 7, line 36, after "appoint" insert ":".

Page 7, line 36, strike "three (3)".

Page 7, line 36, before "disinterested" begin a new line block indented and insert:

"(1) one (1)".

Page 7, line 36, after "freeholders" insert **"freeholder"**.

Page 7, line 36, reset in roman "of".

Page 7, line 37, reset in roman "the county".

Page 7, line 37, after "county" insert "; **and**

(2) two (2)".

Page 7, line 37, after "appraisers" insert **"licensed under IC 25-34.1 who are residents of Indiana;"**.

Page 7, line 37, beginning with "to" begin a new line blocked left.

Page 7, line 39, delete "An appraiser" and insert **"One (1) of the**

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appraisers appointed under subdivision (2) must reside not more than fifty (50) miles from the property."

Page 7, delete lines 40 through 42.

(Reference is to HB 1010 as printed January 11, 2006.)

MAHERN

HOUSE MOTION

Mr. Speaker: I move that House Bill 1010 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 22-13-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 1.5. A state agency or political subdivision may not require that a lawfully erected sign be removed or altered as a condition of issuing:**

- (1) a permit;**
- (2) a license;**
- (3) a variance; or**
- (4) any other order concerning land use or development;**

unless the owner of the sign is compensated in accordance with IC 32-24."

Page 1, delete lines 13 through 14.

Page 1, line 15, delete "(2)" and insert "(1)".

Page 1, after line 15, begin a new line block indented and insert:

"(2) Providing the owner of the property with an appraisal or other evidence used to establish the proposed purchase price.

(3) Conducting good faith negotiations with the owner of the property."

Page 2, delete lines 1 through 2.

Page 3, line 40, delete "." and insert "**and _____ (condemnor) is not required to agree to your demands."**

Page 6, line 12, delete "section" and insert "sections".

Page 6, line 12, after "5.8" insert "**and 5.9**".

Page 6, line 28, after "domain" insert "**for the same project or a substantially similar project**".

Page 7, line 16, after "domain" insert "**for the same or a substantially similar project**".



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Page 7, line 16, delete "six (6)" and insert "**three (3)**".

Page 7, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 6. IC 32-24-1-5.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.9. (a) As used in this section, "public utility" means a public utility, municipally owned utility, cooperatively owned utility, or joint agency created under IC 8-1-2.2.**

(b) This section applies only to a public utility.

(c) If:

(1) a public utility submits a written acquisition offer to the owner of a parcel of real estate under section 5 of this chapter; and

(2) the owner rejects the offer;

the public utility, to acquire the parcel by the exercise of eminent domain, must file a complaint under this article, not more than six (6) years after the date on which the public utility submitted the written acquisition offer to the owner.

(d) If a public utility fails to meet the requirements set forth in subsection (c) concerning a parcel of real estate, the public utility may not initiate an action under this article to acquire the parcel through the power of eminent domain for the same project or a substantially similar project for at least three (3) years after the date on which the six (6) year period described in subsection (c) expires."

Page 10, line 15, delete ";" and insert ",".

Page 10, reset in roman lines 16 through 17.

Page 10, delete lines 33 through 42, begin a new paragraph and insert:

"Sec. 1. (a) As used in this section, "public use" means the:

(1) possession, occupation, and enjoyment of a parcel of real property by the general public or a public agency;

(2) use of a parcel of real property to create or operate a public utility, including an energy utility (as defined in IC 8-1-2.5-2); or

(3) acquisition of a parcel of real property to cure a specific and identifiable harmful effect caused by the use of the parcel, including the:

(A) removal of a:

(i) public nuisance; or

(ii) structure that is beyond repair or unfit for human habitation or use; and

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(B) acquisition of abandoned property.

The term does not include the public benefit of economic development, including an increase in a tax base, tax revenues, employment, or general economic health.

(b) This chapter applies to a condemnor that exercises the power of eminent domain to acquire a parcel of real property:

- (1) from a private person;**
- (2) with the intent of ultimately transferring ownership or control to another private person; and**
- (3) for a use that is not a public use."**

Page 11, delete lines 1 through 4.

Page 11, line 17, delete "is unfit for human" and insert ":".

Page 11, delete line 18.

Page 12, line 1, delete "and" and insert ", **garbage, or other**".

Page 12, line 4, after "exceed the" insert "**assessed**".

Page 12, between lines 12 and 13, begin a new line double block indented and insert:

"(J) There is a reasonable doubt concerning who owns the parcel."

Page 12, between lines 24 and 25, begin a new line blocked left and insert:

"A determination concerning whether a condition described in this section has been met is subject to judicial review in an eminent domain proceeding concerning the parcel of real property."

Page 12, line 34, after "(ii)" insert "**upon the request of the owner and if the owner and condemnor both agree,**".

Page 13, line 18, after "\$1,000)." insert "**However, the total amount of attorney's fees that a condemnor may be required to reimburse an owner under this section may not exceed two hundred fifty thousand dollars (\$250,000).**".

Page 13, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 12. IC 36-7-2-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5.5. A unit may not require that a lawfully erected sign be removed or altered as a condition of issuing:

- (1) a permit;**
- (2) a license;**
- (3) a variance; or**
- (4) any other order concerning land use or development;**

unless the owner of the sign is compensated in accordance with IC 32-24."

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Page 16, line 14, delete "filed on or after November 23, 2005." and insert **"that have not reached a final judgment before the effective date of this SECTION."**.

Renumber all SECTIONS consecutively.

(Reference is to HB 1010 as printed January 11, 2006.)

WOLKINS

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1010, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 10, after "unless the" insert **"state agency or political subdivision provides reasonable compensation to the"**.

Page 1, line 10, delete "is compensated in accordance with" and insert **"for the loss of the sign."**.

Page 1, delete line 11.

Page 1, between lines 11 and 12, begin a new paragraph and insert:
"SECTION 2. IC 23-14-60-1 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) If:

- (1) any number of persons have:
 - (A) acted together as an association or corporation;
 - (B) acquired, as an association or corporation, land for cemetery purposes;
 - (C) sold and granted to persons the right to bury the dead in lots located on the land; and
 - (D) actually managed and controlled the land as a cemetery for at least thirty (30) years; but
- (2) the organization that the persons attempted to establish as a corporation or cemetery association is defective and incomplete because of a failure to comply with the formalities required by law in force at some time since the original parties first assumed to act as an association or corporation;

the owners of the right to bury the dead on lots in the cemetery and those who may acquire the right become and continue to be a cemetery association or corporation from March 14, 1913.

- (b) The owners of the right to bury the dead on lots in a cemetery

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referred to in subsection (a) have all the rights and powers of a cemetery association or corporation organized under this article, IC 23-1, or IC 23-17. ~~including the power of eminent domain under IC 32-24-1.~~

SECTION 3. IC 23-14-75-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter applies to ~~the following~~:

~~(1) A:~~

~~(A) city;~~

~~(B) town;~~

~~(C) township;~~

~~(D) corporation or association; or~~

~~(E) another owner;~~

~~that owns or controls a public cemetery that has been in existence for at least thirty (30) years.~~

~~(2) A:~~

~~(A) city, town, or township; or~~

~~(B) corporation or association~~ **a city, town or township** that:

(1) owns a cemetery that has been in existence for at least thirty (30) years; or

that (2) desires to own a public cemetery.

SECTION 4. IC 23-14-75-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. If land has not been appropriated or set apart by the owners by platting for a public cemetery and it is necessary to purchase real estate for the cemetery:

(1) the legislative body of the city or town; **or**

(2) the executive of the township;

~~(3) the trustees or directors of the corporation or association; or~~

~~(4) the other owners;~~

have has the power of eminent domain to condemn and appropriate the land for cemetery purposes under proceedings provided by statute."

Page 7, line 12, delete "to provide" and insert **"for the construction, reconstruction, improvement, maintenance, or repair of"**.

Page 7, line 14, after "(1)" insert **"if the construction, reconstruction, improvement, maintenance, or repair of the feeder road begins not later than five (5) years from the conclusion of the project"**.

Page 7, line 36, delete "or".

Page 7, line 37, after "IC 8-1-2.2" insert **", municipal sanitation department operating under IC 36-9-23, sanitary district operating under IC 36-9-25, or an agency operating as a stormwater utility"**.

Page 7, line 38, delete "." and insert **"or pipeline company."**.

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Page 7, line 40, after "utility" insert **"or pipeline company"**.

Page 8, line 1, after "offer" insert **"in writing"**.

Page 8, line 2, delete "," and insert **"or pipeline company,"**.

Page 8, line 4, after "utility" insert **"or pipeline company"**.

Page 8, line 6, after "utility" insert **"or pipeline company"**.

Page 8, line 7, after "utility" insert **"or pipeline company"**.

Page 8, line 10, delete "three (3)" and insert **"two (2)"**.

Page 9, line 14, after "objections" insert **"by not more than thirty (30) days"**.

Page 10, line 28, strike "(b) If there is a trial, the additional costs caused by the trial shall be".

Page 10, line 29, strike "paid as ordered by the court. However,".

Page 10, line 29, delete "except as provided in".

Page 10, line 30, delete "IC 32-24-4.5-5,".

Page 10, line 30, strike "if there is a trial and the amount of damages awarded".

Page 10, strike lines 31 through 35, begin a new paragraph and insert: **"(b) If the owner of a parcel of real property incurs attorney's fees because a plaintiff seeks to acquire the parcel through the exercise of eminent domain, the plaintiff shall reimburse the owner's reasonable attorney's fees. However, the total amount of attorney's fees that a plaintiff may be required to reimburse an owner under this subsection may not exceed one hundred thousand dollars (\$100,000)."**.

Page 10, line 39, after "damages" insert **"and attorney's fees payable in accordance with section 14 of this chapter"**.

Page 11, line 1, after "assessed" insert **"and attorney's fees payable in accordance with section 14 of this chapter"**.

Page 11, line 3, after "assessed" insert **"and attorney's fees payable in accordance with section 14 of this chapter"**.

Page 11, line 7, after "assessed" insert **"and attorney's fees payable in accordance with section 14 of this chapter"**.

Page 11, between lines 25 and 26, begin a new paragraph and insert:
"SECTION 12. IC 32-24-2-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. A landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.

SECTION 13. IC 32-24-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) After the appraisers file their report, any of the defendants may, within a

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reasonable time fixed by the court, file exceptions to the report, alleging that the appraisal of the property, as made by the appraisers, is not the true cash value of the property. If exceptions are filed, a trial on the exceptions shall be held by the court or before a jury, if asked by either party.

(b) The circuit court clerk shall give notice of filing of the appraisers' report to all known parties to the action and their attorneys of record by certified mail.

(c) Upon the trial of the exceptions, the court may revise, correct, amend, or confirm the appraisal in accordance with the finding of the court or verdict of the jury.

(d) The court shall apportion the costs accruing in the proceedings as justice may require. **However, a landowner who incurs attorney's fees through the exercise of eminent domain under this chapter is entitled to reasonable attorney's fees in accordance with IC 32-24-1-14.**

(e) Changes of venue may be had as in other cases."

Page 11, line 27, delete "Except as".

Page 11, line 28, delete "provided in section 1.5 of this chapter, a" and insert "A".

Page 11, line 40, after "estate" delete "." and insert **"to accomplish the essential delivery of services described in subdivisions (1) and (2)."**

Page 12, delete lines 5 through 14.

Page 12, line 22, after "agency" insert **"for the purpose of providing the general public with fundamental services, including the construction, maintenance, and reconstruction of highways, bridges, airports, ports, intermodal facilities, parks, and publicly owned venues"**.

Page 12, between lines 22 and 23, begin a line block indented and insert:

"(2) leasing of a highway, bridge, airport, port, intermodal facility, park, or publicly owned venue by a public agency that retains ownership of the parcel by written lease with right of forfeiture; or".

Page 12, line 23, delete "(2)" and insert **"(3)"**.

Page 12, line 24, delete ", including" and insert ",."

Page 12, line 25, delete ";" and insert ",."

Page 12, line 25, after "or" insert **"a pipeline company."**

Page 12, delete lines 26 through 33.

Page 12, after line 42, begin a new paragraph and insert:

"(c) This chapter does not apply twenty (20) years after the

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acquisition of the real property."

Page 13, between lines 2 and 3, begin a new paragraph and insert:

"Sec. 3. As used in this chapter, "parcel" means the real property that is under common ownership and that the condemning authority is seeking to acquire.

Sec. 4. As used in this chapter, "private person" means a person other than a public agency.

Sec. 5. As used in this chapter, "public agency" means:

- (1) a state agency (as defined in IC 4-13-1-1);**
- (2) a unit (as defined in IC 36-1-2-23);**
- (3) a body corporate and politic created by state statute;**
- (4) a school corporation (as defined in IC 20-26-2-4); or**
- (5) another governmental unit or district with eminent domain powers.**

The term does not include a state educational institution (as defined in IC 20-12-0.5-1).

Sec. 6. As used in this chapter, "relocation costs" mean relocation expenses payable in accordance with the federal Uniform Relocation Assistance Act (42 U.S.C. 4601 through 42 U.S.C. 4655)."

Page 13, line 3, delete "Sec. 3." and insert "**Sec. 7.**".

Page 13, line 12, delete "private or".

Page 13, line 13, delete "dwelling" and insert "**structure**".

Page 13, line 13, after "that" insert "**is unfit for human habitation or use because the structure**".

Page 13, line 19, after "applicable" insert "**building codes or**".

Page 13, line 34, delete "predominantly" and insert "**substantially**".

Page 13, line 40, delete "." and insert "**, and the neglect or lack of maintenance has not been corrected by the owner of the parcel within a reasonable time after the owner receives notice of the accumulation or infestation.**".

Page 14, delete lines 2 through 5.

Page 14, line 6, delete "(H)" and insert "**(G)**".

Page 14, line 8, delete "(I)" and insert "**(H)**".

Page 14, delete lines 9 through 18.

Page 14, line 19, delete "(3)" and insert "**(2)**".

Page 14, between lines 22 and 23, begin a new line block indented and insert:

"(3) If the owner files a request for mediation at the time the owner files an objection or exception to an eminent domain proceeding, the court shall appoint a mediator not later than ten (10) days after the request for mediation is filed.

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Mediation must be concluded not later than ninety (90) days after the appointment of the mediator. A condemnor shall engage in good faith mediation with the owner, including the consideration of a reasonable alternative to the exercise of eminent domain. The condemnor shall pay the costs of the mediator."

Page 14, line 26, delete "Sec. 4." and insert "**Sec. 8.**".

Page 14, line 41, delete "not to exceed two hundred and fifty thousand" and insert "**including a loss incurred in a trade or business that is attributable to the exercise of eminent domain;**".

Page 14, line 42, delete "dollars (\$250,000);".

Page 15, line 8, delete "not to exceed two hundred and fifty thousand" and insert "**including a loss incurred in a trade or business that is attributable to the exercise of eminent domain;**".

Page 15, line 9, delete "dollars (\$250,000);".

Page 15, line 17, delete "not to exceed two hundred and fifty thousand" and insert "**including a loss incurred in a trade or business that is attributable to the exercise of eminent domain;**".

Page 15, line 18, delete "dollars (\$250,000);".

Page 15, line 20, delete "Sec. 5." and insert "**Sec. 9.**".

Page 15, line 23, after "reimburse" insert "**the owner's reasonable**".

Page 15, line 23, after "fees" delete ":" and insert ".".

Page 15, delete lines 24 through 28.

Page 15, line 31, delete "two" and insert "**one**".

Page 15, line 31, delete "fifty".

Page 15, line 31, delete "(\$250,000)" and insert "**(\$100,000)**".

Page 15, between lines 31 and 32, begin a new paragraph and insert:
"SECTION 15. IC 32-24-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 7. Procedure for Libraries

Sec. 1. This chapter applies to the exercise of eminent domain by a library board (as defined in IC 36-12-1-3). Notwithstanding any other law, a library board may exercise eminent domain only if it complies with this chapter.

Sec. 2. A library board may exercise eminent domain only if one (1) of the following legislative bodies adopts a resolution specifically authorizing the library board to exercise eminent domain over a particular parcel of land for a specific purpose:

(1) If the library district is located entirely within the corporate boundaries of a municipality, the legislative body of the municipality.

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(2) If the library district:

(A) is not described by subdivision (1); and

(B) is located entirely within the boundaries of a township;
the legislative body of the township.

(3) If the library district is not described by subdivision (1) or
(2), the legislative body of each county in which the library
district is located.

**Sec. 3. The resolution described in section 2 of this chapter must
specifically describe:**

(1) the parcel of land that the library board seeks to acquire
by exercising eminent domain;

(2) the purpose for which the parcel of land is to be acquired;
and

(3) why the exercise of eminent domain is necessary to
accomplish the library board's purpose."

Page 15, line 40, after "unless the" insert **"unit provides reasonable
compensation to the"**.

Page 15, line 40, delete "is compensated in accordance with" and
insert **"for the loss of the sign."**.

Page 15, delete line 41.

Page 16, line 12, delete "IC 32-24-4.5-3(1)" and insert **"IC
32-24-4.5-7(1)"**.

Page 17, line 25, delete "IC 32-24-4.5-3(1)" and insert **"IC
32-24-4.5-7(1)"**.

Page 18, line 36, delete "This act applies" and insert **"(a) As used
in this SECTION, "committee" refers to the interim study
committee on eminent domain established by this SECTION.**

(b) There is established the interim study committee on eminent
domain. The committee shall study issues related to the exercise of
eminent domain.

(c) The committee may meet as often as necessary to carry out
its duties under this SECTION.

(d) The committee shall submit a final report of the results of its
study to the legislative council before November 1, 2007.

(e) The affirmative votes of a majority of the voting members
appointed to the committee are required for the committee to take
action on any measure, including final reports.

(f) Except as otherwise specifically provided by this act, the
committee shall operate under the rules of the legislative council.
All funds necessary to carry out this act shall be paid from
appropriations to the legislative council and legislative services
agency.

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(g) This SECTION expires November 2, 2007."

Page 18, delete lines 37 through 38.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1010 as reprinted January 26, 2006.)

LONG, Chairperson

Committee Vote: Yeas 11, Nays 0.

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